



COUNTY OF LOS ANGELES

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November 12, 2002

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Syn. No. 4

April 2, 2002

TO: SUPERVISOR ZEV YAROSLAVSKY, Chairman
SUPERVISOR GLORIA MOLINA
SUPERVISOR YVONNE BRATHWAITE BURKE
SUPERVISOR DON KNABE
SUPERVISOR MICHAEL D. ANTONOVICH

FROM: LLOYD W. PELLMAN
County Counsel

DAVID E. JANSSEN
Chief Administrative Officer

RE: **Report on County Regulation of Adult Businesses**

On April 2, 2002, your Board adopted a joint motion of Supervisors Burke and Molina which instructed County Counsel and the Chief Administrative Office to coordinate with several departments to conduct a review of County ordinances which regulate adult businesses. In performing this review, we were directed to consider any recent changes in the law governing the regulation of adult businesses and any ordinances which have recently been adopted by other local jurisdictions and to report back to your Board with recommended ordinance changes.

CONCLUSIONS

We have concluded that regulation of adult businesses by the current zoning and business license codes could be strengthened by amending those codes to provide better consistency and uniformity between them. Working with the Department of Regional Planning and the Business License Division of the Treasurer-Tax Collector, we have begun that process. We expect to forward the proposed amendments to your Board by December 10, 2002.

Legal challenges to laws which regulate adult businesses are usually based on claims that they violate the First Amendment right to free expression. In order to survive such a challenge, ordinances similar to those either recently enacted by other jurisdictions or upheld by the United States Supreme Court ("Supreme Court") and California Court of Appeal would require findings by your Board that demonstrate that they advance significant governmental interests. That test is met by findings which establish that the regulations contained in the ordinances are necessary to combat negative secondary effects associated with adult businesses.

ANALYSIS

Facts

Currently, ten adult businesses operate in the unincorporated area of the County. Five of these businesses offer live entertainment. The other five are either bookstores which sell or display sex-oriented books, magazines or other written or visual material; or, motion picture arcades which offer viewing of sex-oriented movies, videos and still photos.

Adult businesses in the County are regulated primarily through the zoning code (Title 22, Chapter 22.62) and business license code (Title 7, Chapter 7.92). The zoning code generally regulates the location and exterior standards of adult businesses, while, among other things, the business license code sets general operating rules and standards for the interior configuration of such businesses.

Prior to 1994, the County zoning code mandated a conditional use permit for adult businesses. At that time, a similar provision in the City of Anaheim was challenged in federal court as unconstitutional because it provided government officials excessive discretion to deny a permit solely on the basis of the speech being conveyed. Before a ruling in that case, a similar lawsuit was filed in state court against the County. In that case, the plaintiff agreed with the County to postpone a trial until the City of Anaheim case was decided.

In the meantime, in 1994, the County amended the business license code to require that adult businesses obtain a business license and to establish the conditions which must be met in order to obtain such a license. The requirement for a business license was adopted to ensure that some regulation of adult businesses would remain in place if the County's existing zoning regulations were nullified by a court.

In 1996, the federal district court invalidated the City of Anaheim's requirement that adult businesses obtain a conditional use permit. After that ruling, the County settled its pending lawsuit by amending the zoning code to replace the requirement for a conditional use permit with objective, "content neutral" standards designed to protect the health, safety and welfare of the community by minimizing the harmful secondary impacts of such businesses.

The provisions of the business license and zoning codes which were adopted in 1994 and 1996, respectively, constitute the County's current regulation of adult businesses in the unincorporated area.

Summary of Legal Principles

The free speech clause of the First Amendment is the constitutional provision most frequently invoked in cases challenging laws which regulate adult businesses. Typically, such cases claim that the regulations unconstitutionally curtail or suppress "pure speech" (e.g., access to films, books or other written materials) or "expressive speech" (e.g., nude dancing or other forms of live entertainment). In general, the regulations have been upheld as long as the government could demonstrate that they were enacted to further a legitimate governmental purpose and not to suppress expression.

Supreme Court rulings have established that regulation of adult businesses which is designed to eliminate or mitigate the negative secondary effects on the community caused by those businesses is a valid exercise of a government's authority to protect the health, safety and general welfare of its residents. Negative secondary effects are indirect impacts of adult businesses which adversely affect the public health, safety and welfare. They include decreases in property values, increases in crime, the spread of sexually transmitted or other diseases, or any other impact which diminishes the quality of life of the residents of the community.

The government bears the burden of justifying a challenged regulation. To meet that burden, it must identify the negative secondary effects which the regulation is attempting to address. It must also demonstrate that it relied on evidence that these negative secondary effects already exist or will be created without the regulation and that they will be eliminated or ameliorated by the regulation.

However, recent Supreme Court rulings have confirmed that the governmental agency need not conduct its own study to establish the required evidentiary support. Rather, it may rely on studies conducted by other agencies, conclusions in court decisions, or any other evidence that it reasonably believes is relevant to establish a connection between the operation of adult businesses and the negative secondary effects which the regulation is attempting to control.

Recent Developments

Within the last two years, the Supreme Court has issued rulings upholding two types of regulations on adult businesses which are not included within the County's zoning or business license codes. And, the California Court of Appeal ("Court of Appeal") issued a ruling upholding many provisions of the City of Newport Beach's regulations of adult businesses, some of which exist in the County's zoning or business license codes and some of which are not included. In each case, the Court concluded that the local agency established that the regulation was intended to combat negative secondary effects and that the agency's findings were based on sufficient evidence demonstrating a link between adult businesses and the existence of those negative secondary effects.

In *City of Erie v. PAP's A.M.*, the Supreme Court upheld a local public indecency ordinance which prohibited public nudity citywide, including within establishments which offer live entertainment. A similar provision in Newport Beach's ordinance was upheld by the Court of Appeal. Relying on these decisions, several local jurisdictions have amended their business license ordinances to prohibit nude dancing.

In the zoning context, the Supreme Court ruled that studies demonstrating a link between the concentration of adult businesses and negative secondary effects could be used by the City of Los Angeles to justify an ordinance which prohibits more than one adult business from being located in the same building or structure. The ordinance seeks to disperse such businesses, thereby reducing the concentration of the harmful secondary effects caused by the establishments.

Were the County to adopt similar ordinances, your Board would have to make legislative findings based on evidence which demonstrated a link between nude dancing and/or the concentration of adult businesses and negative secondary effects.

Revisions to the County's Zoning and Business License Codes

From our review of the adult business regulations in the County's zoning and business license codes, we have determined that non-substantive amendments should be made to strengthen the County's ability to apply and enforce those regulations. In some instances, different terms are used to describe the same type of establishment or activity. And, in a few areas, the two codes set forth duplicative or slightly different requirements for the operation of adult businesses in the County.

We have identified the provisions which need to be amended to eliminate these concerns. And, we have begun to work with the Department of Regional Planning and the Business License Division of the Treasurer-Tax Collector to draft the amendments necessary to address these issues and permit the two codes to operate in a more coordinated and harmonious way in the regulation of adult businesses. We anticipate presenting these amendments to your Board by December 10, 2002.

If you have any questions concerning this matter, please contact either me, John Krattli at 974-1838, or Peter Gutierrez at 974-1857. ::

LWP:PJG:am

c: Sheriff Leroy D. Baca

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